

### § 15.3

### 25 CFR Ch. I (4–1–04 Edition)

any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

*Probate clerk* means a BIA or tribal employee who is responsible for processing a probate package.

*Probate specialist* means the BIA or tribal employee who is trained in Indian probate matters.

*Restricted land* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Superintendent or Field Representative* means an authorized representative of the Secretary of the Interior who is the officer in charge of a BIA agency or field office.

*Testate* means the decedent executed a will before his death.

*Trust cash assets* means the funds held in an IIM account.

*Trust land* means the land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian.

*Vendor or Creditor* means any individual or company who submits a claim for payment from a decedent's estate.

*We/Us* means either an official of the BIA or a tribe performing probate functions under a BIA contract or compact.

*Will* means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

*You/I* means an interested party, as defined herein, with an interest in the decedent's estate unless a specific section says otherwise.

#### § 15.3 Will the Secretary probate all the property in Indian estates?

(a) No. We will probate only the trust or restricted property in the estate of an Indian decedent.

(b) We will not probate:

(1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property;

(2) Restricted property derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests.

(c) We will probate the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owns an interest in land derived from an individual Indian other than the Five Civilized Tribes or Osage Nation.

#### § 15.4 How does the probate process work?

The basic steps of the probate process are:

(a) We find out about a person's death (see subpart B for details);

(b) We prepare a probate package which includes documents that you send us (see subpart C for details);

(c) We refer the completed probate package to a deciding official in the BIA or the OHA (see subpart D for details);

(d) The deciding official decides how to distribute the property and/or funds deposited in an IIM account (see subparts D and E for details).

### Subpart B—Starting the Probate Process

#### § 15.101 How do I begin the BIA probate process?

As soon as possible you should contact the nearest BIA agency or regional office where the decedent was enrolled to inform us of the decedent's death. You must provide a certified copy of the death certificate, if one exists. If a death certificate does not exist, you may provide one or more of the following:

(a) A copy of the obituary notice from a local newspaper; or

(b) Any other document that we accept that verifies the death, such as a church record or a court record; and

(c) An affidavit of death prepared by the tribe with whom the decedent was

## Bureau of Indian Affairs, Interior

## § 15.107

associated or someone who knows about the decedent's death that supports the information in paragraph (a) or (b) of this section.

### **§ 15.102 May I notify the BIA of a death if I am not related to the decedent?**

Yes. You do not need to be related to the decedent in order to notify us of the death. You can be a friend, neighbor, or any other interested party.

### **§ 15.103 When should the BIA be notified of a death?**

There is no deadline for notifying us of a death. However, you should notify us of a death as soon as possible after the person dies.

### **§ 15.104 What other documents does the BIA need to process a probate package?**

(a) You should provide us with the following documents and information before we can begin to process the probate package.

- (1) Social Security number of the decedent;
- (2) The birth certificate or other record of birth of the decedent;
- (3) All death records including those listed in § 15.101;
- (4) A list of known creditors against the estate and their addresses;
- (5) Current names and addresses of potential heirs and beneficiaries;
- (6) Any statements renouncing an interest in the estate;
- (7) Documents from a court of competent jurisdiction, including but not limited to:
  - (i) All marriage licenses of the decedent;
  - (ii) All divorce decrees of the decedent;
  - (iii) Adoption and guardianship records relevant to the decedent;
  - (iv) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;
  - (v) Any name changes; and
  - (vi) Order requiring payment of child support;
- (8) All original or certified copies of wills and codicils, and any revocations; and
- (9) Any additional documents you provide or that we request.

(b) You must inform us if any of the documents or information identified in this part are not available.

### **§ 15.105 Will the BIA wait to begin the probate process until it is notified of the decedent's death?**

No. We may find out about the death of a person without being notified by an interested party. If we do, and if the decedent meets the criteria in § 15.3, we will initiate the process to collect the necessary documentation. You should not assume that we will find out about a death. To assure timely distribution of the estate, you should notify us as provided in § 15.101.

### **§ 15.106 Can I get emergency assistance for funeral services from the decedent's IIM account?**

(a) If you are responsible for making the funeral arrangements on behalf of the family of a decedent who had an IIM account and you have an immediate need to pay for funeral arrangements prior to burial, you may make a request to the BIA for up to \$1,000 from the decedent's IIM account if the decedent's IIM account has more than \$2,500 in the account at the date of death.

(b) You must apply for this assistance and submit to the BIA an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs up to \$1,000 that are necessary for the burial services, taking into consideration the total amount in the account, the number of probable heirs or beneficiaries of whom we are aware, the amount of any claims against the account of which we are aware, and any other relevant factor.

(d) We will make payments directly to the providers of the services.

### **§ 15.107 Who prepares an Indian probate package?**

The probate specialist or probate clerk at the agency or tribe where the decedent is an enrolled member will prepare the probate package in consultation with the probable heirs or beneficiaries who can be located.